

defended its analysis and findings, noted the flaws in Cortlandt's contentions, and then stated (*id.*)

"The final EIS concluded that the Algonquin/Iroquois System Alternative [that includes the Eastchester project] would have a greater impact than Millennium and was not a reasonable alternative to Millennium. We concur with this conclusion."

Finally, the "Northeast ConneXon" project that is endorsed by Cortlandt as an alternative to the Millennium Project is nothing more than a one-page concept that does not even have a defined route. This "alternative" has not been described with the specificity necessary to assess whether it would in any way be an available and reasonable alternative.

**THE SECRETARY SHOULD OVERRIDE THE NYSDOS'S
OBJECTION ON CZMA GROUND 2: THE MILLENNIUM
PROJECT IS NECESSARY IN THE INTEREST OF NATIONAL SECURITY**

A proposed project is "necessary in the interest of national security" and thus satisfies CZMA Ground 2 if a national security interest would be "significantly impaired" in the event that the project were not permitted to proceed. 15 C.F.R. § 930.122. In this case, a failure to permit the Millennium Project to proceed would significantly impair national security interests in at least two respects and thus satisfies the requirements of CZMA Ground 2.

First, from an international perspective, the Nation's energy security, which is a key component of our national security, would be significantly impaired if the Secretary did not permit the Project to proceed. In his 2003 State of the Union address, President Bush decried the

Nation's dependence on foreign energy sources.⁴⁹ The National Energy Policy Development Group ("NEPD Group"), which the President commissioned to study and create a National Energy Policy, calls the Nation's reliance on foreign oil a serious long-term challenge which not only has grave economic implications, but makes the United States vulnerable to foreign states which do not always have U.S. interests at heart.⁵⁰ In fact, referring to the energy crisis imbalance between supply and demand, the NEPD Group stated that if it is allowed to continue, it "will inevitably undermine our economy, our standard of living, and our national security."⁵¹ Clearly, the Millennium Project will promote greater use of natural gas and displace foreign oil in the Northeast the region most heavily dependent on foreign oil⁵² and is thus necessary in the interest of national security.

Energy Secretary Spencer Abraham has emphasized that energy security is a core mission of the Department of Energy⁵³ and is a "fundamental component of national security."⁵⁴ As Secretary Abraham has warned, "[O]ur energy infrastructure -- the transmission lines and pipelines that move electricity, gas and oil -- is wholly inadequate to meet our needs in the twenty first century."⁵⁵ In its comments to the Secretary, the DOE concludes that the Millennium

⁴⁹ New York Times, January 29, 2003, at A12, col. 2.

⁵⁰ Report of the National Energy Policy Development Group, *National Energy Policy*, at x (May 2001).

⁵¹ *Id.* at viii.

⁵² See *United States Government Asked to Release Emergency Heat*, Reuters News Service (February 7, 2003) (noting that of the 7.7 million U.S. households using No. 2 fuel oil to heat their homes, 5.3 million households, or roughly 69%, reside in the Northeast).

⁵³ Secretary of Energy Spencer Abraham, Prepared Statement Before the House Commerce Committee Regarding the National Energy Policy (June 13, 2001).

⁵⁴ Secretary Spencer Abraham, Statement Before the House International Relations Committee (June 20, 2002).

⁵⁵ Secretary of Energy Spencer Abraham, Alliance to Save Energy Luncheon Keynote Address (October 25, 2001).

Project is both “*Necessary in the Interest of National Security*” and “*Necessary for U.S. Natural Gas Supply Security*” (DOE Comments, at 1, 2). DOE explains that (*id.* at 2):

“The security of fossil energy supplies remains a prominent issue despite recent relative market tranquility. In recent years, the United States has reduced vulnerability to supply disruptions by increasing the efficiency of energy use, continuing to emphasize emergency preparedness, helping to develop diverse world oil and natural gas sources and alternative fuels, and increasing our attention to domestic energy systems security. However, recent statistics indicate our nation faces increases of 50 percent for natural gas usage over the next two decades. We must seek to strengthen our energy security by working cooperatively with key trading partners to expand our energy supplies. Canada has become our leading foreign supplier of natural gas, providing 16.4 percent of U.S. natural gas demand in 2001. Canadian natural gas supplies, including those projected for the Millennium Pipeline Project, will continue to provide necessary energy supplies in the U.S. market into the foreseeable future.”

As events in the Middle East over the past several decades have demonstrated all too clearly, the Nation’s reliance upon energy supplies from insecure sources can significantly compromise both our national defense and our national security.

The Project would thus play a major role in reducing U.S. vulnerability to supply disruptions, encourage the development of secure North American energy resources that would be easier to defend than foreign sources in the event of a military conflict, and increase the Nation’s secure domestic energy assets. In each of these regards, the Project would materially strengthen our national security interests.

Second, from a domestic perspective, the Project can provide a degree of energy security that is an important element of our national security in light of the terrorist threats that the Nation now faces in the wake of September 11’s tragic events. The security benefits of the

Millennium Project have been emphasized by FERC Chairman Wood (FERC Chairman Letter, at 2):

"I believe that the project will contribute to the region's energy security, a particularly vital national consideration at the present time. In addition to increasing the diversity of available pipeline transportation options and access to supply sources, the pipeline will increase overall regional infrastructure reliability and offer an additional source of outage protection."

As Chairman Wood testified last year:

"[A]n adequate energy infrastructure is critical for the economic success of our nation. Infrastructure investments bring disproportionately high returns for society -- new pipelines and transmission lines lower delivered costs by reducing congestion and improving competition and commerce between regions. Better infrastructure lowers costs by lowering supplier market power. It improves energy and security."⁵⁶

Similarly, the New York Public Service Commission advised the FERC that

"Millennium will be an additional pipeline to the New York City metropolitan area, which would provide an alternative in the event an existing pipeline fails." By providing such contingency protection and promoting a greater degree of interconnectivity and redundancy in the Northeast's gas pipeline grid, thus enhancing its ability to reroute gas shipments in crisis situations, the Project would improve the reliability of the energy infrastructure serving New York City and other major metropolitan areas in the Northeast. These contributions to the national security are significant and would be impaired if the Secretary did not permit the Project to proceed.

The national security benefits of the Project are especially important in light of the dependence of the Northeast and New York, in particular -- on foreign oil. As the American Gas Association points out in its comments to the Secretary:

“Since a significant number of residences in the New York region are heated with imported home heating oil, prompting Congress to enact an expensive Northeast Home Heating Oil Reserve last year, the national security aspects of replacing fuel oil with North American natural gas must not be understated. Projects such as the Millennium pipeline serve an important national security interest by reducing our dependence on foreign oil”⁵⁷

The DOE has reached a very similar conclusion:

“[T]he DOE notes that the Northeast has traditionally been at the end of the domestic pipeline distribution system and that the proposed import arrangements would enhance energy security by adding to the diversity of energy sources.”⁵⁸

CONCLUSION

The purpose of the CZMA appeals process is to permit the Secretary “to ensure that projects which do significantly or substantially further the national interest in the CZMA’s objectives, and where the national interest outweighs impacts to coastal uses and resources, may be federally approved.”⁵⁹ This is such a case. The Millennium Project will significantly and substantially further the national interest in the CZMA’s objectives, and adverse impacts to coastal uses and resources will be minimal and temporary. Moreover, there are no reasonable and available alternatives. In addition, the Project is necessary in the interest of national security from both international and domestic perspectives. Millennium therefore respectfully requests the Secretary to either dismiss the NYSDOS’s objection as untimely or override the objection in order to permit the Project to proceed as proposed. A contrary decision, we respectfully submit,

⁵⁶ Testimony Before the Senate Energy and Natural Resources Committee (July 24, 2002), at 13.

⁵⁷ Comment of the American Gas Association dated January 6, 2003, at 2.

⁵⁸ *Brooklyn Union Gas Co.*, *supra* note ____, 1 FE at 71,216.

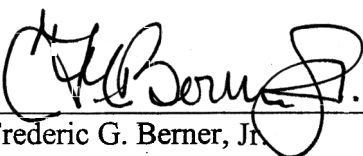
⁵⁹ Preamble to NOAA’s regulations, 65 Fed. Reg. 77124, 77150 (December 8, 2000).

would have a chilling effect on the natural gas industry and would jeopardize the FERC's ability to promote the addition of new pipeline capacity that will be urgently needed in the years ahead. As Donald F. Santa, Jr., a former FERC Commissioner and now Executive Vice President of the Interstate Natural Gas Association of America ("INGAA"), has advised the Secretary (INGAA Comments dated January 8, 2003, at 2).

"I urge the Secretary to override the State's objection. To do otherwise would undermine the legitimacy of the [FERC's] certificate process and produce a result contrary to the stated goals of the Nation's energy policy."

Respectfully submitted,

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